

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 158 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MANIBEN SUKHALAL

Versus

DHANASUKH MANORDAS  
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Appearance:

MR PS CHAMPANERI for Petitioners  
MR DP KINARIWALA for Respondent No. 3  
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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 07/04/2000

ORAL JUDGEMENT

This Civil Revision Application has been  
filed against the judgment order dated 4th November, 1989  
in Civil Appeal No. 26 of 1984 passed by the Joint  
District Judge, Surendranagar dismissing the appeal and  
confirming the judgment and decree dated 31.12.83 in

Regular Civil Suit No. 157 of 1978      passed by the    2nd  
Joint Civil Judge (J.D.), Surendranagar.

2. The respondent nos. 1 to 5- original plaintiffs filed Regular Civil Suit no.157 of 1978 against appellants-original defendant nos. 1 and 2 for recovery of arrears of rent and mesne profits and for possession of the suit premises consisting of one room and a kitchen and osari situated in Keri Bazar Surendranagar. The respondent nos. 6 to 9 have also been arrayed as party as defendant nos. 6 to 9, though they were formal parties, on the assertion that the suit premises was let out to the deceased Sukhlal Chaturbhai at monthly rent of Rs.4/- . The defendant no.1 is the wife of deceased Sukhlal Chaturbhai and defendant no. 2 is the son of the deceased, defendant nos. 3 to 6 are daughters of the said deceased Sukhlal Chaturbhai. The plaintiffs claimed the rent of Rs.512/- for the last 128 months. The plaintiffs gave a notice dated 24.4.78 to the defendants. Thereafter, the defendants sent M.O. of Rs.172/- which was lesser amount than what was actually claimed in this notice. Therefore, the M.O. was refused by the plaintiffs. The defendant no.1 in her written statement contended that the suit premises was let out to her husband Sukhlal before about 40 years at monthly rent of Rs.2/- only. Thereafter, the rent was arbitrarily increased to RS.4/- . She has raised this dispute of standard rent. The defendants also contended that the they are monthly tenants, but the tenancy is from year to year. She also stated that she had gone to pay rent to the plaintiffs, but they were not accepting the rent and they were also not giving rent receipts though the rent was paid to them. The defenant also raised the dispute regarding standard rent. It was also contended that Rs.2/- per month should be the standard rent. The original rent of RS.2/- per month which was arbitrarily fixed by pressure to RS.4/- per month. The defendant also sent an amount of Rs.172/- which was refused by the plaintiffs.

3. From the pleadings and evidence on record, the learned Civil Judge framed 10 issues. After examining the evidence on record, the learned trial Judge came to the conclusion that the plaintiffs have proved that the defendants are in arrears of rent for more than six months. He also held that that rent is payable from month to month and rent can be recovered as per English calender month. The plaintffs could not prove that the suit premises is to be demolished as averred in para-5 and that the defendant no.1 could not prove that there is non-joinder of necessary parties. The trial court also

held that the standard rent is Rs.4/- per month and not Rs.2/- per month as disputed by the defendants. The defendant no.1 could not prove that she is ready and willing to pay the standard rent. The notice given by the plaintiffs to the defendant was held to be legal and valid. The trial court also held that in the notice exh.65 dated 21st August, 21.8.75 there was no mention at all regarding arrears and defendants either with a view to avoid their liability or with a view to get out of arrears, have afterward incorporated that the rent is due from S.Y.2031. In view of this, the trial court passed the judgment and decree dated 31.12.83 directing the defendants to hand over vacant and peaceful possession of the suit premises to the plaintiffs within one month from the date of the order. The trial court also directed the defendants to pay Rs.144/- as rent for 36 months from 6.8.85 to 5.7.78 to the plaintiffs.

Being aggrieved by the said judgment and decree, the defendants filed Civil Appeal No.26 of 1984 before the District Court, Surendranagar. The lower appellate court, after going through the evidence on record and point raised by the parties, framed five points for determination. The lower appellate court by its judgment and order dated 4th November, 1989 held that the rent was payable month by month and it was not payable annually. The lower appellate court, after considering the asseration in the notice, written statement, statements of the witnesses and receipts came to the conclusion that there was a contract between original landlord and original tenant for the payment of rent at the rate of RS.4/- per month. The lower appellate court could not find anything to disturb the findings recorded by the trial court. So far as the second issue whether the trial court has erred in holding that the suit as filed by the plaintiff is maintainable is concerned, the lower appellate court came to the conclusion that the trial court was justified in holding that the suit filed by Mansukhbhai and his brother is maintainable in law and there was no defect in filing the suit. Hence, the finding recorded by the trial court deserves to be maintained. So far as the point no.3 whether the trial court has erred in holding that the defendants were tenants in arrears of rent for more than six months at the date of the suit notice and they neglect ed to pay rent than due within one month from the receipt of the notice of demand, the lower appellate court held that they claimed arrears of rent for 128 months and the rent due was Rs.500/-. The entire evidence has been considered and discussed in the judgment in this respect by the lower appellate court and

came to the conclusion that the plaintiffs have proved that the defendants were in arrears of rent from Shravan Sud of S.Y.2023 to Fagun Vad Amas of S.Y.2034. As such, the defendants were in arrears of rent for more than six months on the date of demand notice and the lower appellate court found that the trial court has not committed any error in holding that the defendants were tenants in arrears of rent for more than six months on the date of the demand notice. The matter was also considered by the courts below that the defendants have tried to show that they have tendered arrears of rent by M.O., but the same were not accepted by the plaintiffs. If the actual amount due is not sent by the tenants to the landlord or rent falls short of actual due, then it would not be necessary for the plaintiffs to accept the same. The defendants never tendered the amount of rent which was due at the time of tendering the same. The amount of rent tendered by M.O. by the tenant to the landlord will not be helpful to the defendants.

4. It has also been considered by the lower appellate court that if the original landlord expires, the liability of the tenant to pay rent does not come to an end and that will continue even if the original landlord expires and it is not open to the petitioners to say that the question of successor tenant was not decided by the trial Court. In the same way, if the original tenant expires, then his or her heirs are liable for the payment of rent to the landlord. The tenants have not complied with the requirements of section 13(3) of the Act.

Consequently, all the requirements of section 12(3) of the Rent Act are in existence. On the other hand, the defendants have not paid or tendered rent within one month from the date of receipt of the demand notice.

So far as point no. 4 whether the trial court committed error in holding that the suit notice is legal and valid and point no. 5 whether the trial court committed error in awarding a decree for possession and arrears of rent in favour of the plaintiffs, are concerned, the lower appellate court came to the conclusion that the notice in question exh. 26 was found to be legal one and the defendants were in arrears of rent for more than six months on the date of the demand notice and they have not paid the rent due within one month from the date of receipt of the demand notice as required under section 12(3)(a) of the Act. Both the lower courts have recorded concurrent findings in respect

of the same in favour of the plaintiffs-landlord. Therefore, the learned Joint District Judge, Surendranagar by his judgment and order dated 4th November, 1989 dismissed the said appeal and hence the petitioners-original defendants have filed the present Civil Revision Application in this Court.

5. Heard the learned counsel for the parties. The learned counsel for the petitioners-defendants submitted that the petitioners-defendants are entitled for the benefits of section 12(3)(b) of the Act inasmuch as the petitioners tendered the rent by M.Os. exhs. 42 to 47. The M.O. for Rs. 20/- was sent on 8th March, 1975. Exh. 43 shows that the defendants sent M.O. of Rs.40/- to the plaintiffs on 9.8.75. Exh. 44 shows that the amount of Rs.56/- was sent on 24.11.75. The amount of Rs.24/- was sent by M.O. exh. 45 on 12.5.75. The amount of Rs. 168/- was sent by M.O. exh. 46 on 5.4.78 and last M.O. exh. 47 was sent on 22nd May, 1978 regarding the payment of Rs.172/-. All those M.Os. sent by the petitioners to the plaintiffs were refused to be accepted by the plaintiffs. As such, the petitioners had been willing to pay the rent and sent M.O. as stated above and it cannot be said that they neglected to pay the rent as held by the courts below. The notice for arrears of rent and possession was sent by the plaintiffs to the defendants on 22nd April, 1978 for Rs.512/-. The suit was filed on 5.8.78. As such, the petitioners sent the money order exh. 47 dated 22.5.78 which was refused by the plaintiffs. Therefore, the petitioners-defendants cannot be held liable for neglecting the payment of rent as the petitioners sent M.O. within one month from the date of the notice, but that M.O. was refused by the plaintiffs.

6. I have carefully considered these facts. The notice was sent on 22nd April, 1978 for Rs.512/-, but the petitioners tendered the amount of Rs.172/- by M.O. exh.47. The entire amount claimed by the plaintiff was not sent to the plaintiffs. Hence, the plaintiffs were fully justified in not accepting the M.O. In this respect, the learned counsel for the petitioners contended that the plaintiffs were not entitled to claim arrears of rent for three years prior to the date of filing of the suit or notice. The amount of Rs.172/- was the amount of rent for more than six months.

7. The learned counsel for the respondents submitted that the amount of rent will include time barred amount of rent. The defendants cannot say that they were not liable to pay time barred rent. In support of this

contention, he relied on the decision of the Supreme Court in the case of Khadi Gram Udyog Trust vs. Shri Ram Chandraji Virajman Mandir reported in 1978, SC, 287, wherein the Apex Court has held that the statute has conferred a benefit on the tenant to avoid a decree for eviction by complying with the requirement of Section 20(4). If he fails to avail himself of the opportunity and has not paid the rent for not less than four months and within one month from the date of service upon him of a notice of demand, the landlord under Section 20(2) would be entitled to an order of eviction. Still then

tenant can avail himself of the protection by complying with the requirements of Section 20(4). The words "entire amount of rent due" in Section 20(4) would include rent which has become time barred.

Thus, it appears that the defendants have not tendered the entire amount of rent of RS.512/demanded by the landlord by M.O. exh.47 dated 22nd May, 1978 as the M.O. was for the lesser amount of Rs. 172/instead of Rs. 512/- demanded by the landlord. The plaintiffs were entitled for the entire amount of Rs.512/- and not Rs.172/-. The defendants have failed to fulfil the requirements of section 12(3)(a) of the Rent Act. Hence, the defendants are not entitled for the benefit as this is a case in which the provisions of section 12(3)(a) of the Rent Act are applicable. Hence, the petitioners were not entitled for the benefit under section 12(3)(b) of the Rent Act. Moreover, the learned counsel for the petitioners submitted that the petitioners-defendants have deposited the entire amount of Rs.548/- on the first date of summons and thereafter, they are regularly depositing the amount of rent. In this connection, the trial court has held that this case falls under the provisions of section 12(3)(a) of the Act. The defendants have not tendered full arrears of rent of Rs.512/- for 128 months at the time of notice and even thereafter during the pendency of the suit, amount of rent was not deposited regularly. But during pendency of some other appeal, the entire amount of rent in arrears was deposited. The learned counsel for the petitioners-defendants submitted that the notice was sent on 12th April, 1978. The suit was filed on 5.8.78 and the entire amount demanded was deposited in the court on 18.12.78. Thus, even the petitioners have not deposited the entire amount on the first date of hearing. As such, the petitioners are not entitled for any benefit.

8. In view of the above discussion, I do not find any reasonable ground calling for the interference

in the concurrent findings of the courts below, in exercise of the revisional jurisdiction under section 29 of the Bombay Rent Act. This Revision Application has no merit and is liable to be dismissed and is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated forthwith.

9. In the last, the learned counsel for the petitioners requested that the petitioners may be granted four weeks' time to enable them to approach higher forum. Considering the facts and circumstances of the case, I do not find any substance in this request, and hence this request is rejected.

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